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C O N F I D E N T I A L SECTION 01 OF 04 ABUJA 001693

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DOE FOR CAROLYN GAY

E.O. 12958: DECL: 08/03/2017
TAGS: PGOV PINR KDEM KJUS NI
SUBJECT: YAR'ADUA LAWYER ON PRESIDENTIAL ELECTION TRIBUNAL

REF: A. ABUJA 1467
¶B. ABUJA 1440
¶C. ABUJA 1397
¶D. ABUJA 922

ABUJA 00001693 001.2 OF 004

Classified By: Charge d'Affaires Robert Gribbin for Reasons 1.4 (b & d)
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¶1. (C) SUMMARY: In a conversation with PolOff that appeared at times incongruent and contradictory, Kabiru Turaki, a member of the legal team representing President Yar'Adua in the on-going Presidential Election Tribunal, averred that all petitions against the President would be jettisoned for lack of merit. Should the petitioners appeal such a decision, Turaki anticipates the Supreme Court will uphold the lower court's ruling. Surprisingly, Turaki insisted that the Independent Electoral Commission (INEC) delay in supplying documents to the tribunal was intentional and due to the fact that no documents exist -- he claims that INEC is busily "fabricating" tabulation and result sheets and forging signatures. He opined that the tribunals are programmed for failure since, according to the court's interpretation of the law, INEC is presumed innocent and to demonstrate INEC's culpability in any electoral malpractice nation-wide would be virtually impossible. Turaki contends that the likely consolidation of petitions of the AC/Atiku, ANPP, and Buhari would bolster the President's chances of winning since it would reduce the number of cases and would preclude either Buhari or Atiku learning from each other's mistakes in court. Despite his own opposition to the use of the tribunal process, Turaki is also representing PDP gubernatorial candidates challenging results in Kano, Gombe, and Adamawa states. END SUMMARY.

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PRESIDENTIAL ELECTION TRIBUNAL
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¶2. (C) On July 31, PolOff met with Barrister Kabiru Turaki, associate counsel in President Yar'Adua's legal team, to discuss the petitions filed at the Presidential Election Tribunal contesting Yar'Adua's victory at the April 21 polls. Petitions have been filed by the All Nigeria People's Party (ANPP), jointly by Atiku Abubakar and the Action Congress (AC) and by Muhammadu Buhari. Turaki appeared confident that these petitions would be jettisoned for lack of merit.

Should this decision be appealed, he felt the Supreme Court would likely uphold the lower court's ruling. Having examined the petitions, Turaki told PolOff enthusiastically that none meets the stringent requirements set forth by law. He contended that the election tribunals may well be programmed for failure. In particular, Turaki emphasized that complainants are required to gather substantial evidence which can prove, through a preponderance of facts, that election results are invalid and should be nullified; the thirty-day deadline for submitting all documentary evidence makes this virtually impossible. Turaki conceded that in a case on the scale of the national elections, in particular, thirty days is insufficient to assemble evidence from the thirty-six states and the FCT. Turaki noted that respondents (like Yar'Adua, for example) "have the resources and machinery of the state" behind their efforts and thus stand a solid chance of winning. He observed that the Nigerian judiciary's conventional interpretation of the 2006 Electoral Act presumes INEC innocent and places the burden of proof on the complainant.

¶3. (C) An equally important factor impeding the complainants' ability to gather evidence has been the Independent Electoral Commission's (INEC) refusal to supply INEC documents including voter registers, ballot papers, and tabulation and result sheets to petitioners. Turaki claimed that INEC's delay stemmed from the fact that the INEC documents in question, in truth, do not exist; he alleged that, according to his INEC contacts, INEC was busily "fabricating" tabulation and result sheets and forging signatures of resident electoral commissioners from around the country. He commented that Atiku's petition file contains no INEC documents, nor does it note any ward or polling station where an electoral fraud is alleged to have occurred (INEC possesses this information). This, Turaki confided, diminishes the petition's credibility and



effectiveness. As Turaki explained, to overturn the election, the petitioner must demonstrate that INEC rigged the election results and contrived with the security services to effectuate a particular electoral outcome -- the means to build such a case, Turaki admitted, exceed the capacity of any petitioner.

¶4. (C) Turaki contends that the ANPP's July 30 request to the tribunal to consolidate the petitions of the AC/Atiku, ANPP, and Buhari will bolster the President's chances of winning. Not only would this reduce the number of cases to be defended, it would also exclude the possibility of any of the complainants learning from each other's mistakes in court. With respect to the Federal Court of Appeal President Justice Abdullahi Umaru, who also appoints justices to the state and presidential election tribunals, Turaki considered him impartial and trustworthy and affirmed that he exercises limited influence to coerce other judges.

¶5. (C) Turaki was frank with PolOff on his disdain for complainants filing petitions to overturn election results. He admonished losing candidates that pursue their grievances in the courts, contending that such action demoralizes party supporters. In instances where challenged results are upheld by the courts because the complainant was unable to produce sufficient documentary evidence (despite a general awareness that significant electoral fraud was committed), Turaki maintained the decision only serves to "cleanse" otherwise guilty candidates of their "moral burden" and legitimate illegitimately-elected candidates.

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GUBERNATORIAL ELECTION TRIBUNALS
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¶6. (C) Though incongruent to his stated disdain for the election tribunal process, Turaki told PolOff he is also representing the People's Democratic Party (PDP)

gubernatorial candidates contesting election results in Gombe, Kano, and Adamawa states. He lamented his inability to compel his witnesses to appear at trial, despite these witnesses having furnished sworn, written depositions in May. Turaki indicted the newly-sworn in governments in these three states for "dispensing favors" (positions in government, for example) to silence or co-opt the witnesses -- in order to stymie their testimony and forestall the possibility of protracted, potentially injurious tribunal processes. According to Turaki, some witnesses who came forth and were deposed in May have been paid to "disappear," have been intimidated in some fashion, or have voluntarily withdrawn their testimony.

¶7. (C) Notwithstanding the difficulty encountered with compelling his witnesses to appear at trial, Turaki appeared confident that the PDP petition contesting the election of Kano state governor Ibrahim Shekarau (ANPP) would succeed at overturning the results, as the margin of the ANPP victory was only 50,000 votes. Given the diminutive margin of victory, Turaki discerned, the burden of proof he must affect is not difficult. Turaki told PolOff that he has identified ten of Kano's forty-four polling stations as locations in which ballot boxes were stuffed, voters intimidated, and opposition party agents were prevented from observing and verifying vote tabulation and collation. Though not personally involved in these cases, Turaki expects the gubernatorial elections in Kebbi, Sokoto, and Rivers states to be nullified by the state election tribunals.

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IMPRESSIONS OF YAR'ADUA
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¶8. (C) When asked about his impressions of Yar'Adua, Turaki opined that former president Obansajo hand-picked Yar'Adua because he is docile, transparent, and soft-hearted. He maintained that Yar'Adua understands politics perfectly well and values the importance of consensus as the leader of a disparate nation inclusive of powerful elites with competing interests. Because Obasanjo still controls the military, Turaki assessed that Yar'Adua will have to tread carefully when it comes to changes in policy direction from the Obasanjo administration. Moreover, he remarked that Obasanjo



was careful to install loyalists such as David Mark as Senate President. Should Yar'Adua overstep his mandate or move too far from Obasanjo, Turaki surmised, the National Assembly under Mark's leadership will impeach him. That Yar'Adua took almost two months to constitute his cabinet reflect the numerous interests Yar'Adua has been forced to balance in order to pacify allies and co-opt foes. Ultimately, Turaki predicts, Yar'Adua will disentangle himself from Obasanjo, possibly within six months. Distancing himself from Obasanjo requires tact, creativity, and an alternate cadre of supporters; Turaki assures that at the opportune moment, "many will be there to help Yar'Adua cut the cord from Obasanjo." Turaki did indicate that Yar'Adua will carry on the anti-corruption reforms introduced during Obasanjo's tenure. Moreover, he lauded Yar'Adua for his respect for rule of law, in particular noting Yar'Adua's public statements indicating that should the tribunals rule that fresh polls are warranted, Yar'Adua will respect the court's decision.

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BACKGROUND ON TURAKI: BARRISTER, AND GUBERNATORIAL HOPEFUL
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¶9. (C) Kabiru Turaki, one of the first northern barristers to have earned the rank of Senior Advocate of Nigeria, also was tipped recently to be the next Attorney General. A self-avowed PDP loyalist, Turaki expressed indignation over the PDP's decision to expunge his name from the ballots in the April 14 gubernatorial race in Kebbi state. Although

Turaki secured the PDP nomination, his name never appeared on the ballot. Turaki was replaced by Saidu Umaru Dakin-Gari (who was elected Governor) following the February 8 merger agreement between the PDP and the ANPP in Kebbi. In the agreement (which was allegedly brokered by Obasanjo, Tony Anenih, Ojo Maduekwe, and Ahmad Ali), former ANPP candidate Dakin-Gari was appointed the PDP's candidate and Turaki's name was withdrawn. Turaki contends that the merger agreement should be nullified as neither an ANPP national representative nor an INEC official was present at the meeting. Furthermore, Turaki claims the substitution took place after INEC's February 14 deadline for the substitution of candidates. In another move that directly contradicts his expressed contempt for the election tribunal process, Turaki intimated to PolOff that he is collaborating secretly with the ANPP and the Democratic People's Party (DPP) to challenge Dakin-Gari's election. As of August 3, the PDP, who is identified as the primary respondent in the petition filed jointly by the ANPP and DPP, has conceded to five of the petitions' six grounds -- paving the way for a likely overturning of election results in the state. In such an event, Turaki believes, he will be re-named the PDP flag-bearer in a fresh election.

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COMMENT: ARE TRIBUNALS PROGRAMMED TO FAIL?
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¶10. (C) Although candid and revealing, Turaki's remarks are also incongruous and even illogical. While admonishing petitioners for seeking redress through the election tribunal process, Turaki is also the lead counsel of three election petitions and stands to become the direct beneficiary of the process if election results are indeed upended in Kebbi. As well, as legal counsel for Yar'Adua, Turaki seems unfazed by the contradiction of his assertion that INEC is busy fabricating documents and his defense of Yar'Adua as the legitimate winner. What appears illogical and contradictory, however, may well be indicative of the very nature of politics in Nigeria wherein outcome is prized over process.

¶11. (C) COMMENT CONT'D: Of particular concern, especially considering his role as both complainant in Kebbi and defense counsel for the government, is Turaki's assertion that the election tribunals are programmed for failure. The presumption of innocence of INEC and the preponderance of evidence necessary to prove malfeasance to an extent significant enough to impact upon the election results present a considerable, almost insurmountable obstacle. It may be because he is so confident that the national elections could be overturned, that Yar'Adua has been so outspoken in his declaration that he will uphold whatever verdict the



tribunal reaches. END COMMENT.
GRIBBIN